

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1471 – SB 1505

April 18, 2018

SUMMARY OF ORIGINAL BILL: Punishes certain aggravated assault offenses one classification higher if the offense was committed by discharging a firearm from within a motor vehicle and the victim was a minor at the time of the offense.

Requires a second degree murder offense to be sentenced no less than Range II if the offense was committed by discharging a firearm from within a motor vehicle and the victim was a minor at the time of the offense.

Punishes voluntary manslaughter, criminally negligent homicide, and reckless homicide one classification higher if the offense was committed by discharging a firearm from within a motor vehicle and the victim was a minor at the time of the offense.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – \$374,700 Incarceration*

SUMMARY OF AMENDMENTS (012576, 017615): Amendment 012576 deletes and rewrites the proposed legislation such that the only substantive change is to punish second degree murder offenses, in which the offense was committed by discharging a firearm from within a motor vehicle and the victim was a minor at the time of the offense, within one range higher than the sentencing range otherwise appropriate for the offender.

Amendment 017615 changes the effective date from July 1, 2018, to January 1, 2019.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

Increase State Expenditures –

\$187,300/FY18-19/Incarceration*

\$374,700/FY19-20 and Subsequent Years/Incarceration*

HB 1471 – SB 1505

Assumptions for the bill as amended:

Aggravated Assault

- Aggravated assault is an assault that results in serious bodily injury to another, death of another, involved the use or display of a deadly weapon, or involved strangulation or attempted strangulation.
- Tennessee Code Annotated § 39-13-102 establishes two classes of aggravated assault offenses: intentional/knowning and reckless. Intentional or knowning aggravated assaults are class C felonies, and reckless aggravated assaults are prosecuted as class D felonies.

Intentional/Knowning Aggravated Assaults

- The proposed legislation punishes intentional/knowning aggravated assaults resulting in serious bodily injury or death one classification higher if the offense was committed by discharging a firearm from within a motor vehicle and the victim was a minor at the time of the offense.
- Statistics from the Department of Correction (DOC) show an average of four admissions for intentional/knowning aggravated assaults resulting in death of another each year for the past three years. DOC statistics only show admissions over the last three years. Therefore, the three-year average number of admissions is used.
- The proposed legislation will result in one intentional/knowning aggravated assault admission every five years being enhanced one classification.
- Population growth and recidivism will not impact these admissions.
- The average time served for a class C felony is 3.28 years. The average time served for a class B felony is 6.39 years
- The proposed legislation will result in each admission serving an additional 3.11 years (1,135.93 days).
- According to the DOC, the average operating cost per offender per day for calendar year 2018 is \$71.08.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every five years serving 3.11 years (1,135.93 days) for an annualized cost of \$16,148 $[(\$71.08 \times 1,135.93 \text{ days}) / 5]$.

Reckless Aggravated Assaults

- The proposed legislation punishes reckless aggravated assaults resulting in serious bodily injury or death one classification higher if the offense was committed by discharging a firearm from within a motor vehicle and the victim was a minor at the time of the offense.
- Statistics from the DOC show an average of 128.9 admissions per year for reckless aggravated assault over last 10 years.
- The proposed legislation will result in five percent, or six admissions $(128.9 \times 0.05 = 6.45)$, being enhanced one classification.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for one $(6.45 \times .1178)$ additional admission for a total of seven $(6 + 1)$.

- The average time served for a class D felony is 2.15 years. The average time served for a class C felony is 3.28 years. The proposed legislation will result in each admission serving an additional 1.13 years (412.73 days).
- According to the DOC, 41.7 percent of offenders will re-offend within two years of their release. A recidivism discount of 41.7 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (7 offenders x .417 = 3 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on four offenders (7 offenders – 3 recidivism discount) serving an additional 1.13 years (412.73 days) at a cost of \$29,337 (\$71.08 x 412.73 days) per offender. The cost for four offenders is \$117,348 (\$29,337 x 4).

Second Degree Murder

- Second degree murder is the knowing killing of another or a killing of another that results from the unlawful distribution of any Schedule I or Schedule II drug, when the drug is the proximate cause of the death of the user. Second degree murder is a class A felony.
- The proposed legislation requires an offender convicted of second degree murder to be sentenced within one range higher than the sentencing range otherwise appropriate for the person if the offense was committed by discharging a firearm from within a motor vehicle and the victim was a minor at the time of the offense.
- Statistics from the DOC show 111.6 admissions per year for second degree murder over the last 10 years.
- The proposed legislation will result in five percent, or six admissions ($111.6 \times 0.05 = 5.58$), being sentenced within one range higher than the sentencing range otherwise appropriate for the person.
- Population growth will account for one ($5.58 \times .1178$) additional admission for a total of seven ($6 + 1$).
- Statistics from the DOC show the average sentence received for second degree murder is 23.56 years. This falls on the higher end of Range I (15-25 years) for class A felonies.
- Statistics from the DOC show the average time served for second degree murder is 15.83 years, or 67.19 percent ($15.83 / 23.56$) of the average sentence received.
- The proposed legislation will result in each offender receiving an average sentence of 38 years. Assuming the same percentage of the sentence received will be served, 67.19 percent, the proposed legislation will result in each admission serving 25.53 years (38×0.6719).
- The proposed legislation will result in each admission serving an additional 1.97 years ($25.53 - 23.56$).
- According to the DOC, 41.7 percent of offenders will re-offend within two years of their release. A recidivism discount of 41.7 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (7 offenders x .417 = 3 offenders).

- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on four offenders (7 offenders – 3 recidivism discount) serving an additional 1.97 years (719.54 days) at a cost of \$51,145 (\$71.08 x 719.54 days) per offender. The cost for four offenders is \$204,580 (\$51,145 x 4).

Voluntary Manslaughter

- Voluntary manslaughter is the intentional or knowing killing of another in a state of passion produced by adequate provocation sufficient to lead a reasonable person to act in an irrational manner. Voluntary manslaughter is a class C felony.
- The proposed legislation would enhance voluntary manslaughter one classification if the offense was committed by discharging a firearm from within a motor vehicle and the victim was a minor at the time of the offense.
- Statistics from the DOC show no admissions for voluntary manslaughter over the last ten years.
- The proposed legislation will not impact state incarceration costs relative to voluntary manslaughter offenses.

Reckless Homicide

- Reckless homicide is the reckless killing of another. Reckless homicide is a class D felony.
- The proposed legislation would enhance reckless homicide one classification if the offense was committed by discharging a firearm from within a motor vehicle and the victim was a minor at the time of the offense.
- Statistics from the DOC show an average of 15.1 admissions per year for reckless homicide over the last 10 years.
- The proposed legislation will result in five percent, or one admission ($15.1 \times 0.05 = 0.76$), being enhanced one classification.
- Population growth and recidivism will not impact these admissions.
- The average time served for a class D felony is 2.15 years. The average time served for a class C felony is 3.28 years. The proposed legislation will result in each admission serving an additional 1.13 years ($3.28 - 2.15$).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 1.13 years (412.73 days) at a cost of \$29,337 ($\71.08×412.73 days).

Criminally Negligent Homicide

- Criminally negligent homicide is criminally negligent conduct that results in death. Criminally negligent homicide is a class E felony.
- The proposed legislation would enhance criminally negligent homicide one classification if the offense was committed by discharging a firearm from within a motor vehicle and the victim was a minor at the time of the offense.
- Statistics from the DOC show an average of 6.5 admissions per year for criminally negligent homicide over the last 10 years.
- The proposed legislation will result in one admission every three years being enhanced one classification.

- Population growth and recidivism will not impact these admissions.
- The average time served for a class E felony is 1.31 years. The average time served for a class D felony is 2.15 years
- The proposed legislation will result in each admission serving an additional 0.84 years (2.15 – 1.31).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every three years serving 0.84 years (306.81 days) for an annualized cost of \$7,269 [(\$71.08 x 306.81 days) / 3].

Total Incarceration Costs

- The proposed legislation has an effective date of January 1, 2019, therefore there will be an increase in state incarceration costs of \$187,341 in FY18-19 [(\$16,148 + \$117,348 + \$204,580 + \$29,337 + \$7,269) / 2].
- Additionally, for FY19-20 and subsequent years, there will be an increase in state incarceration costs of \$374,682 (\$16,148 + \$117,348 + \$204,580 + \$29,337 + \$7,269).

Courts, Public Defenders, and District Attorneys

- The proposed legislation does not create new offenses, and, therefore, will not increase the caseloads of the courts, public defenders, or district attorneys. The courts, public defenders, and district attorneys can accommodate any impact within their existing resources.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

/alm